

**ASSEMBLY BILL**

**No. 2621**

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**Introduced by Assembly Member Norby**

February 19, 2010

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An act to repeal Section 45103.1 of the Education Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2621, as introduced, Norby. School districts: personal services contracting.

Existing law permits school districts to use personal services contracting, in order to achieve cost savings, for all services that are currently or customarily performed by classified school employees if specified conditions are satisfied.

This bill would repeal those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 45103.1 of the Education Code is  
2 repealed.  
3 ~~45103.1. (a) Notwithstanding any other provision of this~~  
4 ~~chapter, personal services contracting for all services currently or~~  
5 ~~customarily performed by classified school employees to achieve~~  
6 ~~cost savings is permissible, unless otherwise prohibited, when all~~  
7 ~~the following conditions are met:~~

1     ~~(1) The governing board or contracting agency clearly~~  
2     ~~demonstrates that the proposed contract will result in actual overall~~  
3     ~~cost savings to the school district, provided that:~~

4     ~~(A) In comparing costs, there shall be included the school~~  
5     ~~district's additional cost of providing the same service as proposed~~  
6     ~~by a contractor. These additional costs shall include the salaries~~  
7     ~~and benefits of additional staff that would be needed and the cost~~  
8     ~~of additional space, equipment, and materials needed to perform~~  
9     ~~the function.~~

10    ~~(B) In comparing costs, there shall not be included the school~~  
11    ~~district's indirect overhead costs unless these costs can be attributed~~  
12    ~~solely to the function in question and would not exist if that~~  
13    ~~function was not performed by the school district. Indirect overhead~~  
14    ~~costs shall mean the pro rata share of existing administrative~~  
15    ~~salaries and benefits, rent, equipment costs, utilities, and materials.~~

16    ~~(C) In comparing costs, there shall be included in the cost of a~~  
17    ~~contractor providing a service any continuing school district costs~~  
18    ~~that would be directly associated with the contracted function.~~  
19    ~~These continuing school district costs shall include, but not be~~  
20    ~~limited to, those for inspection, supervision, and monitoring.~~

21    ~~(2) Proposals to contract out work shall not be approved solely~~  
22    ~~on the basis that savings will result from lower contractor pay rates~~  
23    ~~or benefits. Proposals to contract out work shall be eligible for~~  
24    ~~approval if the contractor's wages are at the industry's level and~~  
25    ~~do not undercut school district pay rates.~~

26    ~~(3) The contract does not cause the displacement of school~~  
27    ~~district employees. The term "displacement" includes layoff,~~  
28    ~~demotion, involuntary transfer to a new classification, involuntary~~  
29    ~~transfer to a new location requiring a change of residence, and~~  
30    ~~time base reductions. Displacement does not include changes in~~  
31    ~~shifts or days off, nor does it include reassignment to other~~  
32    ~~positions within the same classification and general location or~~  
33    ~~employment with the contractor, so long as wages and benefits~~  
34    ~~are comparable to those paid by the school district.~~

35    ~~(4) The savings shall be large enough to ensure that they will~~  
36    ~~not be eliminated by private sector and district cost fluctuations~~  
37    ~~that could normally be expected during the contracting period.~~

38    ~~(5) The amount of savings clearly justify the size and duration~~  
39    ~~of the contracting agreement.~~

1     ~~(6) The contract is awarded through a publicized, competitive~~  
2 ~~bidding process.~~

3     ~~(7) The contract includes specific provisions pertaining to the~~  
4 ~~qualifications of the staff that will perform the work under the~~  
5 ~~contract, as well as assurance that the contractor's hiring practices~~  
6 ~~meet applicable nondiscrimination standards.~~

7     ~~(8) The potential for future economic risk to the school district~~  
8 ~~from potential contractor rate increases is minimal.~~

9     ~~(9) The contract is with a firm. A "firm" means a corporation,~~  
10 ~~limited liability corporation, partnership, nonprofit organization,~~  
11 ~~or sole proprietorship.~~

12     ~~(10) The potential economic advantage of contracting is not~~  
13 ~~outweighed by the public's interest in having a particular function~~  
14 ~~performed directly by the school district.~~

15     ~~(b) Notwithstanding any other provision of this chapter, personal~~  
16 ~~services contracting shall also be permissible when any of the~~  
17 ~~following conditions can be met:~~

18     ~~(1) The contract is for new school district functions and the~~  
19 ~~Legislature has specifically mandated or authorized the~~  
20 ~~performance of the work by independent contractors.~~

21     ~~(2) The services contracted are not available within the district,~~  
22 ~~cannot be performed satisfactorily by school district employees,~~  
23 ~~or are of such a highly specialized or technical nature that the~~  
24 ~~necessary expert knowledge, experience, and ability are not~~  
25 ~~available through the school district.~~

26     ~~(3) The services are incidental to a contract for the purchase or~~  
27 ~~lease of real or personal property. Contracts under this criterion,~~  
28 ~~known as "service agreements," shall include, but not be limited~~  
29 ~~to, agreements to service or maintain office equipment or~~  
30 ~~computers that are leased or rented.~~

31     ~~(4) The policy, administrative, or legal goals and purposes of~~  
32 ~~the district cannot be accomplished through the utilization of~~  
33 ~~persons selected pursuant to the regular or ordinary school district~~  
34 ~~hiring process. Contracts are permissible under this criterion to~~  
35 ~~protect against a conflict of interest or to ensure independent and~~  
36 ~~unbiased findings in cases where there is a clear need for a~~  
37 ~~different, outside perspective. These contracts shall include, but~~  
38 ~~not be limited to, obtaining expert witnesses in litigation.~~

39     ~~(5) The nature of the work is such that the criteria for emergency~~  
40 ~~appointments apply. "Emergency appointment" means an~~

1 ~~appointment made for a period not to exceed 60 working days~~  
2 ~~either during an actual emergency to prevent the stoppage of public~~  
3 ~~business or because of the limited duration of the work. The method~~  
4 ~~of selection and the qualification standards for an emergency~~  
5 ~~employee shall be determined by the district. The frequency of~~  
6 ~~appointment, length of employment, and the circumstances~~  
7 ~~appropriate for the appointment of firms or individuals under~~  
8 ~~emergency appointments shall be restricted so as to prevent the~~  
9 ~~use of emergency appointments to circumvent the regular or~~  
10 ~~ordinary hiring process.~~

11 ~~(6) The contractor will provide equipment, materials, facilities,~~  
12 ~~or support services that could not feasibly be provided by the~~  
13 ~~school district in the location where the services are to be~~  
14 ~~performed.~~

15 ~~(7) The services are of such an urgent, temporary, or occasional~~  
16 ~~nature that the delay incumbent in their implementation under the~~  
17 ~~district's regular or ordinary hiring process would frustrate their~~  
18 ~~very purpose.~~

19 ~~(e) This section shall apply to all school districts, including~~  
20 ~~districts that have adopted the merit system.~~

21 ~~(d) This section shall apply to personal service contracts entered~~  
22 ~~into after January 1, 2003. This section shall not apply to the~~  
23 ~~renewal of personal services contracts subsequent to January 1,~~  
24 ~~2003, where the contract was entered into before January 1, 2003,~~  
25 ~~irrespective of whether the contract is renewed or rebid with the~~  
26 ~~existing contractor or with a new contractor.~~